



**UNITED STATES HOUSE OF REPRESENTATIVES
OFFICE OF THE MAJORITY WHIP
THE HONORABLE JAMES E. CLYBURN (SC-06)**

THE WHIP PACK

WEEK OF SEPTEMBER 3, 2007

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BILL TEXT AND BACKGROUND FOR THE WEEK OF SEPTEMBER 3, 2007

- H.R. 2786 – Native American Housing Assistance and Self-Determination Reauthorization Act of 2007
- H.R. 811 – Voter Confidence and Increased Accessibility Act of 2007
- H.R. 1908 – Patent Reform Act of 2007

**H.R. 2786 – NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION
REAUTHORIZATION ACT OF 2007** *(Rep. Kildee – Financial Services) (Subject to a Rule)*

Bill Text: [HTML Version](#), [PDF Version](#)
[Bill Summary and Status](#)

Rules Committee Meeting: Wednesday, September 5, at 3:00 p.m. in H-313 the Capitol, [Amendment Process](#), [Special Announcement](#)

Committee: [Committee on Financial Services](#)

Committee Staff Contact: 5-4247

LEGISLATION AT A GLANCE:

H.R. 2786 reauthorizes the Native American Housing Assistance Self Determination Act (NAHASDA) for five years and amends the law to address housing needs in Indian Country. NAHASDA was first approved in 1996 and reorganized and simplified the Department of Housing and Urban Development's (HUD) system of housing assistance to American Indians and Alaska Natives by eliminating several separate HUD programs and replacing them with a single block grant program made directly to tribes. The purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance.

H.R. 2786 clarifies rules and regulations that apply to NAHASDA to remove regulatory burdens and make it easier for tribes to execute their Indian Housing Plans pursuant to NAHASDA. The bill also attempts to encourage tribes to participate in low income housing tax credit projects and the Title VI loan guarantee program, and to compete for HOME funds. H.R. 2786 also creates a self- determination-housing program to allow tribes to make independent decisions regarding the use of a portion of their NAHASDA grant to acquire, rehabilitate, and construct housing.

House Report 110-295:

[HTML Version](#), [PDF Version](#)

Full Committee Mark-up:

[Mark-up of 2547, H. Con. Res. 140, and H.R. 2786](#), June 26, 2007
[National Journal Report](#)

Summary of Committee Vote:

- **Vote to Report:** Favorably Reported to the Full House by **Voice Vote**.

CRS Reports:

(TBA)

CBO Report:

[Cost Estimate](#): Ordered Reported by the Committee on Financial Services

GAO Reports:

(TBA)

Full Committee Hearing:

[Reauthorization of the Native American Housing Assistance and Self-Determination Act](#),
June 6, 2007

Witness Testimony:

- [The Honorable Orlando J. Cabrera](#), Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development
- [Ms. Cheryl Parish](#), Vice Chairwoman, National American Indian Housing Council
- [Ms. Sami Jo Difuntorum](#), Executive Director, Karuk Tribe Housing Authority
- [Ms. Aneva J. Yazzie](#), Chief Executive Officer, Navajo Housing Authority
- [Mr. Wendsler Nosie](#), Sr., Chairman, San Carlos Apache Tribe
- [Ms. Jacqueline L. Johnson](#), Executive Director, National Congress of American Indians
- [Mr. Mark Chino](#), President, Mescalero Apache Tribe

Organization Statements:

(TBA)

Administration Position:

(TBA)

Fact Sheets & Talking Points:

(TBA)

Press Releases, News Articles & Related Information:

(TBA)

Other Resources:

[Cosponsors of H.R. 2786](#)

H.R. 811 - VOTER CONFIDENCE AND INCREASED ACCESSIBILITY ACT OF 2007 (Rep. Holt
– House Administration) (Subject to a Rule)

Bill Text: [HTML Version](#), [PDF Version](#)
[Bill Summary and Status](#)

Rules Committee Meeting: Wednesday, September 5, at 3:00 p.m. in H-313 the Capitol, [Special Announcement](#)

Committee: [Committee on House Administration](#)

Committee Staff Contact: 5-2061

LEGISLATION AT A GLANCE:

Safeguards Elections and Restores Voter Confidence. In order to restore voters' faith in the process, H.R. 811 will require that all voting systems use or produce a voter-verified paper ballot by November of 2008. This ballot will serve as the ballot of record for recounts and audits. H.R. 811 also requires states to provide paper ballots to voters beginning in 2008 if the voting machine in their jurisdiction is broken, and in 2010 and after, for any reason. H.R. 811 also institutes a system of mandatory random audits to ensure that the electronic tallies are routinely and automatically double-checked using the voter-verified paper ballots, to ensure the integrity of the voting systems.

Bipartisan Compromise with Broad Support. Rep. Holt, Members of the House Administration Committee and Democratic Leadership have responded to concerns from Republican and Democratic Members, state and local election officials, voting rights advocates, computer security experts, advocates from the disability rights community and others in constructing a final compromise. H.R. 811 has over 215 bipartisan cosponsors and a broad array of voting rights, civil rights and progressive organizations supporting passage.

States Have Sufficient Time and Flexibility to Implement Requirements. The compromise extends deadlines and allows local officials to have a greater degree of latitude and flexibility in the implementation. For instance, jurisdictions are free to use any available paper ballot mechanism to meet the November 2008 requirement for paper ballots, and numerous states have already demonstrated the ability to overhaul their systems on a statewide basis in less time than remains between now and then. In addition, in response to concerns raised by state and local officials and other stakeholders, the compromise extended to January 2012 the deadline to require paper ballots to be upgraded to be durable, scannable, and accessible to voters with disabilities.

Invests in the Electoral System and Oversight of State Implementation. H.R. 811 authorizes \$1 billion in funding for system replacement and upgrading in FY 2008, with additional funding for upgrades authorized in FY 2009, as well as \$100 million each fiscal year for audits. The funding authorized by H.R. 811 is in addition to the \$300 million in HAVA equipment-related funding appropriated earlier this year in the House-passed FY 2008 Financial services Appropriations Act and \$36.7 million in HAVA disability access funding appropriated in the House-passed FY 2008 Labor, Health and Human Services Appropriations Act.

Ensures Transparency and Integrity in the Electoral Procedures. H.R. 811 provides greater access to software by preventing undisclosed software and providing review of the software, in addition to requiring routine random audits of the electronic tallies using voter-verified paper ballots. It also prohibits connecting voting systems to the Internet and bars voting systems from containing, using or being accessible by wireless devices.

House Report 110-154:
[HTML Version](#), [PDF Version](#)

Full Committee Mark-up:
[Consideration of H.R. 811](#), Tuesday, May 8, 2007
[National Journal Report](#)

Summary of Committee Votes:

- [Rep. Ehlers GOP Substitute Amendment to Lofgren Substitute](#) – Would have directed the National Institute of Standards and Technology to develop guidelines and technological support for electronic voting equipment requirements that would take effect by the 2010 primary elections. **Rejected 3-6: R 3-0; D 0-6.**
- [Rep. Gonzalez Technical Amendment](#) – Makes technical changes to ensure consistency in referring to the Federal Election Commission. **Adopted by Voice Vote.**
- [Rep. Capuano Voting Method Choice](#) – Allows by 2010, voters to choose among multiple voting methods available at polling place. **Adopted by Voice Vote.**
- [Rep. Ehlers Manual Audit Ballot Amendment to Lofgren Substitute](#) – Would have allowed ballots other than voter-verified paper ballots to be preserved and scrutinized in manual election audits. **Rejected 3-6: R 3-0; D 0-6.**
- [Rep. Lungren Voting Machine Amendment to Lofgren Substitute](#) – Would have exempted direct-recording voting machines with an attached thermal reel-to-reel paper ballot from the voter-verifiable paper ballot requirement. **Rejected 3-5: R 3-0; D 0-5.**
- [Rep. McCarthy Early Voting Sites Exception Amendment to Lofgren Substitute](#) – Would have allowed states to continue using electronic voting machines not equipped with any voter verified paper ballots for early voting. **Rejected 3-5: R 3-0; D 0-5.**
- [Rep. Ehlers State Audit Methods Amendment to Lofgren Substitute](#) – Would have required states to submit audit plans to the Election Assistance Commission by the 2010 election cycle. **Rejected 3-5: R 3-0; D 0-5.**
- [Rep. Lungren Readability Amendment to Lofgren Substitute](#) – Would have allowed states to continue the use of paperless electronic voting machines to comply with the disability access provisions of HAVA. **Rejected 3-5: R 3-0; D 0-5.**
- [Rep. Lungren Eliminate Technology Disclosure Requirement Amendment to Lofgren Substitute](#) – Would have removed the software code disclosure language entirely from the legislation. **Rejected 3-6: R 3-0; D 0-6.**
- [Rep. McCarthy Photo Identification Requirement Amendment to Lofgren Substitute](#) – Would have forced voters to show government-issued photo identification at the polls by 2010. **Rejected 3-5: R 3-0; D 0-5.**
- [Rep. McCarthy Photo Identification or Identity Affirmation Amendment to Lofgren Substitute](#) – Would have required voters to show government-issued photo identification at the polls by 2010. If voters could not produce such identification, they must sign affidavits swearing to their identity. **Rejected 3-5: R 3-0; D 0-5.**

- [Rep. McCarthy Funding Requirement Amendment to Lofgren Substitute](#) – Would have suspended the requirements of the bill until the authorization amount is fully appropriated. **Rejected 3-5: R 3-0; D 0-5.**
- [Rep. Lungren Right to Sue Amendment to Lofgren Substitute](#) – Would have removed the private right of action section of the legislation. **Rejected 2-5: R 2-0; D 0-5.**
- [Rep. Lungren Deadline Extension Amendment to Lofgren Substitute](#) – Would have delayed would delay the implementation date until 2012. **Rejected 3-6: R 3-0; D 0-6.**
- [Rep. Lofgren Substitute Amendment](#) – The substitute addresses a number of concerns that were raised by the minority, interest groups and other stakeholders during the timeframe between introduction of the original bill and the mark-up. For example, the amendment addresses many of the concerns regarding implementation dates and funding of the legislation. All jurisdictions that used any paper-ballot-based voting system in 2006, including thermal reel-to-reel systems and accessible systems that used a paper ballot in any manner have until the first election in 2010 to meet new requirements. Additionally, funding for the voting system requirements has been increased from \$300 million to \$1 billion. Furthermore, entities chosen by the State to conduct the audits must satisfy the requirements of 'independence' set forth in the GAO's 'Government Accounting Standards.' The Substitute makes various other changes as well. **Adopted, as Amended, 6-3: R 0-3; D 6-0.**
- **Vote to Report:** Favorably Reported to the Full House by a Recorded Vote **6-3: R 0-3; D 6-0**

Subcommittee on Elections Hearings:

[Election Reform Hearing: Machines & Software](#), March 15, 2007

[Election Reform Hearing: Auditing](#), March 20, 2007

Hearing on H.R. 811, March 23, 2007

CRS Reports:

[RS20898](#): Elections Reform: Overview and Issues

CBO Report:

[Cost Estimate](#): Ordered Reported by the Committee on House Administration

GAO Reports:

(TBA)

Organization Statements:

[People For the American Way](#)

Administration Position:

(TBA)

Fact Sheets & Talking Points:

[Congressman Holt's H.R. 811 Resource Webpage](#)

[Federal Election Reform H.R. 811 Site](#), Brennan Center for Justice

[Resource Webpage on H.R. 811](#), People for the American Way

Press Releases, News Articles & Related Information:

[The Urgency of E-Voting Reform](#), The Hill, August 2, 2007

[Time Running Out for Voting Reform](#), Editorial, New York Times, July 31, 2007

[Agreement Reached to Move Holt Election Reform Bill](#), PFAW, July 27, 2007

[Holt Legislation Would Require Voter-Verified Paper Ballots, Routine Random Audits](#),
Office of Rep, Holt, May 23, 2007
[Committee on House Administration Sends Voter Confidence Bill to House Floor](#), House
Administration, May 9, 2007

Other Resources:

[Cosponsors of H.R. 811](#)

H.R. 1908 – PATENT REFORM ACT OF 2007 (Rep. Berman – Judiciary) (Subject to a Rule)

Bill Text: [HTML Version](#), [PDF Version](#)

[Bill Summary and Status](#)

Rules Committee: Thursday, September 6, at 3:00 p.m. in H-313 the Capitol, [Special Announcement](#), [Amendment Process Announcement](#)

Committee: [Committee on the Judiciary](#)

Committee Staff Contact: 5-3951

LEGISLATION AT A GLANCE:

Comprehensive Result of Bipartisan, Bicameral Efforts. The Patent Reform Act of 2007 (H.R. 1908) is the first comprehensive modernization and revision of the patent law in 55 years. The bill judiciously and prudently addresses those elements of current law which have been identified as needing reform to ensure that in the 21st Century our patent law continues to promote the progress of science and the useful arts as mandated by Article 1, Section 8 of the Constitution.

Right of the First Inventor to File. H.R. 1908 converts the U.S. patent system from a first-to-invent system to a first-inventor-to file system. The U.S. is alone in granting priority to the first inventor as opposed to the first inventor to file a patent. H.R. 1908 will inject needed clarity and certainty into the system. While cognizant of the enormity of the change that a “first inventor to file” system may have on many small inventors and universities, a grace period is maintained to substantially reduce the negative impact to these inventors.

New Formula for Calculating Fair and Equitable Remedies. This section provides much needed guidance to courts and juries to ensure inventors are compensated fairly, while not discouraging innovation with excessive damage awards. While preserving the right of patent owners to receive appropriate damages, the bill provides a formula to ensure that the patent owner be rewarded for the actual value of the patented invention.

Willful infringement and Prior Use Rights. HR 1908 contains certain limitations on willful infringement requiring the patent owner to show. This section provides that a court may only find willful infringement if the patent owner shows, by clear and convincing evidence, that (1) the infringer, after receiving detailed written notice from the patentee, performed the acts of infringement, (2) the infringer intentionally copied the patented invention with knowledge that it was patented, or (3) after having been found by a court to have infringed a patent, the infringer engaged in conduct that again infringed on the same patent. An allegation of willfulness is subject to a “good faith” defense. HR 1908 also expands the “prior user rights” defense to infringement, where an earlier inventor began using a product or process (although unpatented) before another obtained a patent for it.

Post-Grant Procedures And Other Quality Enhancements. H.R. 1908 cures the principal deficiencies of re-examination procedures and creates a new, post-grant review that provides an effective and efficient system for considering challenges to the validity of patents. Addressing concerns that one seeking to cancel a patent could abuse a post-grant review procedure, this section establishes a single opportunity for challenge that must be initiated within 12 months of the patent being granted. It also requires the Director to prescribe rules for abuse of discovery or improper use of the proceeding, limits the types of prior art which may be considered, and prohibits a party from reasserting claims in court that it raised in post-grant review.

Submissions by Third Parties and Other Quality Enhancements. H.R. 1908 will improve patent quality by creating a mechanism for third parties with knowledge of the subject matter of a claimed invention to submit relevant information about prior art to the USPTO. The availability of additional information to the examiner will substantially enhance patent quality.

Venue and Jurisdiction. The bill also addresses changes to venue, to address extensive forum shopping and provides for interlocutory appeals to help clarify the claims of the inventions early in the litigation process. H.R. 1908 would restore balance to this statute by allowing cases to be brought in a variety of locales – including where the defendant is incorporated or has its principal place of business or has committed a substantial portion of the acts of infringement and has a physical facility controlled by the defendant. H.R. 1908 makes patent reform litigation more efficient by providing the Federal Circuit jurisdiction over interlocutory decisions, known as “Markman” orders, in which the district court construes the claims of a patent as a matter of law.

Regulatory Authority. This provision will clarify the authority of the PTO to make procedural rules where appropriate to limit abuses by applicants. Specifically, this amendment clarifies that the Office may make rules that ensure the quality and timeliness of the application process.

Committee Information:

[Committee Page on the "Patent Reform Act of 2007"](#)

House Report:

[HTML Version](#), [PDF Version](#)

Full Committee Mark-up:

[Markup of: H.R. 1908, the “Patent Reform Act of 2007,” and Approval of Assignment to Subcommittee Vacancies](#), July 18, 2007
[National Journal Report](#)
[Hearing Transcript](#)

Summary of Committee Votes:

- [Rep. Schiff Patent Deception Amendment to the Manager's Amendment](#) – Holds a patent unenforceable only if it is established that the patentee intended to deceive the patent examiner and the U.S. Patent and Trademark Office would have not granted a patent in the absence of such deception. It also provides that, upon a finding of inequitable conduct, the court of jurisdiction would be able to deny to the patent holder remedy for infringement to damages and hold the patents and related patent's claims unenforceable. **Adopted by Voice Vote.**
- [Rep. Lofgren Infringement Action Venue Amendment to the Manager's Amendment](#) – Prohibits a party in a patent case from manufacturing a specific district court venue for hearing infringement claims. It would provide that civil actions for patent infringement would be able to be brought only in a judicial district where the defendant has its principal place of business, the defendant has committed a substantial portion of the alleged acts of infringement, the plaintiff resides, or where the plaintiff holds a business. It also would allow a district court to transfer a civil action for patent infringement to another district court if it is a place where the defendant has substantial evidence and witnesses. **Adopted by Voice Vote.**

- [Rep. Chabot Best Mode Requirement Repeal Amendment to the Manager's Amendment](#) – Would have eliminated the requirement that an inventor must be able to set forth the best mode contemplated for carrying out the invention. **Rejected by Voice Vote.**
- [Rep. Pence Best Mode Litigation Amendment to the Manager's Amendment](#) – Makes any patent invalid or unenforceable if the inventor does not comply with the disclosure requirement of the invention's best mode. **Adopted by Voice Vote.**
- [Rep. Jackson-Lee En Bloc Amendments to the Manager's Amendment – First Amendment](#) requires the intellectual property undersecretary and Patent and Trademark Office director to conduct a study every seven years on the effectiveness of revisions made under the bill to the patent derivation litigation system and submit the report to the House and Senate Judiciary committees. [Second Amendment](#) requires the intellectual property undersecretary and Patent and Trademark Office director to conduct a study every seven years on the effectiveness of revisions made under the bill to special defense and exemptions in patent litigation system and submit the report to the House and Senate Judiciary committees. **Adopted, en bloc, by Voice Vote.**
- [Rep. Chabot Misconduct Pleading Limitations Amendment to the Manager's Amendment](#) – Would have imposed limitations on pleading on the invalidity and unenforceability of a patent based in whole or in part upon misconduct in connection with a matter proceeding before the U.S. Patent and Trademark Office. **Rejected by Voice Vote.**
- [Reps. Johnson and Feeney Royalty Awards Amendment to the Manager's Amendment](#) – Requires a court to determine royalty awards on the patent's relationship of damages to contributions, entire market value or on other factors including the terms of any nonexclusive marketplace licensing of the invention. **Adopted by Voice Vote.**
- [Rep. Boucher Tax Methods Patentability Amendment to the Manager's Amendment](#) – Prevents tax planning methods from being patented. **Adopted by Voice Vote.**
- [Rep. Baldwin Prior User Rights Comparison Amendment to the Manager's Amendment](#) – Would have required the Commerce undersecretary for intellectual property and the Patent and Trademark Office director to report to the Senate and House Judiciary committees on the operation of prior use rights in selected countries in the industrialized world. **Withdrawn.**
- [Rep. Sherman Willfulness Limitations Amendment to the Manager's Amendment](#) – Would have included as a ground of willful infringement when the infringer would have recognized the alleged acts of infringement and had used due diligence, considering the size and scope of the infringer's business operations, in searching patents and published applicants. **Withdrawn.**

- [Manager's Amendment](#) – Includes various changes to current the current system including the following: converting the U.S. patent system to a first-inventor-file-system, giving priority to the earlier-filed application for a claimed invention; encourage information-sharing by providing inventors a one-year grace period for publicly disclosing the subject matter of the claimed invention, without losing priority; eliminating interference proceedings; creating a post-grant review procedure that would allow a party to submit a petition to cancel a patent within a year of its issuance or later under certain circumstances; and requiring courts to use the patent venue statute instead of federal venue provisions for civil actions related to patents. It would also allow interlocutory hearings to be appealed prior to the conclusion of a trial.
Adopted, as Amended, by Voice Vote.

- **Vote to Report:** Favorably Reported to the Full House, as Amended, by **Voice Vote.**
Subcommittee on Courts, the Internet, and Intellectual Property Mark-up:
[Subcommittee Markup of: H.R. 1908, "The Patent Reform Act of 2007](#), May 16, 2007
[National Journal Report](#)

Summary of Committee Votes:

- [Chairman Berman Manager's Amendment](#) – Would have made substantial changes to the patent laws legislation to change the apportion damages provision to apply to reasonable royalties and no longer relate to lost profits. The amendment would also change the post-grant review so that patents could not be reviewed after district court litigation. **Withdrawn.**
- **Vote to Report:** Favorably Reported to the Full Committee by **Voice Vote.**

CRS Reports:

[RL33996](#): Patent Reform in the 110th Congress: Innovation Issues

[RL33367](#): Patent Reform: Issues in the Biomedical and Software Industries

CBO Report:

(TBA)

GAO Reports:

(TBA)

Subcommittee on Courts, the Internet, and Intellectual Property Hearing:

[Hearing on H.R. 1908, the Patent Reform Act of 2007](#), April 26, 2007

Witness Testimony:

- [Gary L. Griswold](#), President and Chief Counsel of Intellectual Property 3M Innovative Properties St. Paul Minnesota
- [Anthony Peterman](#), Director, Patent Counsel Dell Incorporated Round Rock, TX
- [Kevin Sharer](#), Chairman of the Board and Chief Executive Officer Amgen Incorporated Thousand Oaks, CA
- [John R. Thomas](#), Professor of Law Georgetown University Law Center Washington, D.C.
- [William T. Tucker](#), Executive Director Research and Administration and Technology Transfer University of California Oakland, CA

[Oversight Hearing on: American Innovation at Risk: "The Case for Patent Reform"](#),
February 15, 2007

Witness Testimony:

- [Adam B. Jaffe](#), Professor of Economics and Dean of Arts and Sciences, Brandeis University Waltham, Massachusetts
- [Suzanne Michel](#), Chief Intellectual Property Counsel and the Deputy Assistant Director for Policy Coordination Federal Trade Commission Washington, D.C.
- [Mark Myers](#), Co-Chair of the National Academy of Sciences Report Patent System for 21st Century Unionville, Pennsylvania
- [Daniel B. Ravicher](#), Executive Director Public Patent Foundation New York, NY

Organization Statements:

[Letters of Support](#), List Updated on Committee Site

Administration Position:

(TBA)

Fact Sheets & Talking Points:

(TBA)

Press Releases, News Articles & Related Information:

[Judiciary Committee Passes Rep. Berman's Patent Reform Bill](#), July 18, 2007

Other Resources:

[Cosponsors of H.R. 1908](#)